

EXPLANATION OF PRESENTATION FORMAT: POST HEARING CHANGES

The regulation text is shown as modified after the public comment period ending July 2, 2002.

Regulation text proposed for adoption is shown as underlined.

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For example: ~~Text for deletion~~

CALIFORNIA CODE OF REGULATIONS

Title 9. Rehabilitative and Developmental Services

Division 1. Department of Mental Health

Chapter 4.5. Patients' Rights and Related Procedures for Non-Lanterman-Petris-

Short Act Patients in Department of Mental Health Facilities

Article 1. General Provisions

880. Application of Chapter.

Chapter 4.5 applies to patients' rights and related procedures for all non-Lanterman-Petris-Short Act (LPS) patients placed in or committed to a treatment program in a Department of Mental Health facility, except when transferred to or placed in a federally certified program.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Sections 1026, 1370, 2684, and 2960, Penal Code; and Section 6600 et seq., Welfare and Institutions Code.

881. Definitions, Abbreviations and Program Terms.

~~(a)~~ "Abuse" means intimidation, punishment, unreasonable confinement, or willful infliction of injury.

~~(a)(b)~~ "Administrative isolation" means ~~placing a patient in a room from which the patient is not able or permitted to exit as a way of containing dangerous behavior that is uncontrollable by any other means~~ the temporary separation of a patient from other patients and the normal living environment for the purpose of protecting possible evidence or maintaining safety and security during a criminal investigation.

~~(b)(c)~~ "Confidential mail" means letters or documents sent to or received from attorneys, courts or government officials through the mail.

~~(d)~~ "Confidential telephone calls" means telephone calls are not monitored or recorded by hospital staff.

~~(e)(e)~~ "Contraband" means materials, articles, or goods that patients are prohibited from having in their possession because such materials, articles or goods present a risk to safety and security in the facility.

~~(d)(f)~~ "Department " means the State Department of Mental Health.

~~(e)(g)~~ "Facility" means a state hospital or other locked inpatient facility operated by the Department, either directly or by contract, for the care and treatment of non-LPS patients.

~~(f)(h)~~ "Facility director" means the Executive Director or designee in overall charge of the facility.

~~(g)~~(i) "Facility monetary replacement system" means the alternate methods used to allow patients to purchase personal items within the facility without using United States currency.

~~(h)~~(j) "Interdisciplinary team" means the group of persons from each of the disciplines or service areas that works directly with the patient.

~~(k)~~ "Medical care" means procedures determined to be medically necessary, and that are not merely cosmetic or restorative in nature.

~~(i)~~(l) "Medical isolation" means the confinement of a patient alone in a room for the purpose of preventing the spread of ~~an~~ infectious or contagious diseasess that may be a ~~or for other~~ public health concerns.

~~(j)~~(m) "Mental disorder" means a diagnosed mental disorder listed in the American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, DSM-IV-TR, 2000 and each of its subsequent revisions.

~~(n)~~ "Neglect" means willful disregard of the needs of a patient relating to adequate food, clothing, shelter, safety, medical care, or mental health treatment.

~~(k)~~(o) "Non-LPS" means that the placement in or commitment to the facility is pursuant to legal authority other than the Lanterman-Petris-Short (LPS) Act, commencing with Section 5000, of Part 1, Division 5 of the Welfare and Institutions Code).

~~(i)~~(p) "Office of Patients' Rights" means the contractor designated in accordance with Section 5510 of the Welfare and Institutions Code. The contractor is delegated the responsibility for providing direct advocacy and investigative services in the state

hospitals and technical assistance, training and advice regarding patients' rights to advocates, mental health programs and/or patients.

~~(m)~~(q) "Package" means a wrapped or boxed object, a parcel, or a container in which something is packed for storage, mailing, or transporting.

~~(n)~~(r) "Patient" means a person placed in or committed to a facility under authority of law for care and treatment.

~~(o)~~(s) "Patients' Rights Advocate" means the person in the facility delegated the responsibility for reviewing and attempting to resolve patients' rights complaints and for ensuring that patients' rights of mentally disordered persons in the facility are observed and protected. This individual shall have no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

~~(p)~~(t) "Physical restraint" means the direct application of physical force and/or approved restraining devices and methods to an individual, to restrict and/or limit freedom of movement.

~~(q)~~(u) "Privacy" means being free from ~~the view or presence of others, except necessary supervision staff observation by individuals of the opposite sex~~ during medical examinations, personal care, bathing and restroom use, except during emergencies and necessary supervision by staff and bodily functions.

~~(r)~~(v) "Protective isolation" means the ~~confinement~~ separation of a patient from other patients and the normal living environment to protect that individual from harm by others.

~~(s)~~(w) "Safety ~~and security~~" means protection of persons and property from potential danger, risk, injury, harm or damage.

~~(x)~~ (x) "Security" means the measures necessary to achieve the management and accountability of patients of the facility, staff, and visitors, as well as property of the facility.

~~(t)(y)~~ "Seclusion" means the involuntary confinement of a person in a locked room or any area where the person is physically prevented from leaving.

~~(u)(z)~~ "Treatment" means clinical intervention and action that is devised and implemented based on comprehensive assessment of the patient by the interdisciplinary team and that is designed to improve or stabilize a diagnosed mental and/or physical condition.

~~(v)(aa)~~ "Treatment Plan" means the method developed by the interdisciplinary team to implement treatment for the patient on an ongoing basis. The treatment plan is documented in writing in the patient's medical record, includes specific goals and objectives, identifies a continuum of care, and is reviewed and modified at frequent intervals by the interdisciplinary team.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Sections 4005.1, 4027 and 5510, Welfare and Institutions Code; Title 42, CFR, Chapter IV, Subchapter C, Part 488, Subpart E, Section 488.301.

Article 2. Non-LPS Patients' Rights

882. Notification of Rights.

(a) Upon admission to the facility, each non-LPS patient shall be informed of the rights specified in Sections 883 and 884 and given a copy of their rights in the language or modality understood ~~preferred~~ by the patient.

(b) These patients' rights shall also be prominently posted in the predominant languages of the patients in patients' living areas.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 4295, Government Code; Sections 5325(i) and 5600.2(g), Welfare and Institutions Code; and 42 CFR 482.13(a).

883. Non-LPS Patients' Rights – Non-Deniable Subject to Limitation or Denial to Preserve Safety and Security.

(a) ~~Patients have the rights listed in Subsection (c) of this Section.~~ The patient's parent, guardian, or conservator may not waive these ~~se~~ rights listed in this Section unless authority to waive these rights is specifically granted by court order. ~~The facility director shall limit or deny these rights only in the case of an emergency and/or to ensure public and facility safety and security.~~

(b) Non-LPS Patients have the following rights:

~~(b) When the facility director denies or limits any rights listed in this Section, the justification for the denial or limitation shall be documented. This documentation shall be retained for a minimal period of three years after the denial or limitation of the rights ends. The Patients' Rights Advocate shall have access to review this documentation. If a limitation or denial of rights becomes permanent, the limitation or denial shall be made a formal, written policy of the facility.~~

~~(c) Patients shall have the following rights regarding their medical and personal care:~~

~~(1) A right to privacy, dignity, respect and humane care during toileting, bathing, and other activities of personal hygiene.~~

~~(2) A right to receive treatment for a diagnosed mental disorder that is provided in a method least restrictive of individual liberty and promotes personal independence.~~

~~(3) A right to ~~essential~~ medical care and treatment for physical ailments and conditions according to accepted clinical standards and practices.~~

(4) A right to be free from psychosurgery and other hazardous procedures.

(5) A right to be free from harm including abuse or neglect, and unnecessary or excessive medication, restraint, seclusion, or protective or administrative isolation. Medication, restraint, seclusion, or protective or administrative isolation shall not be used as punishment, as retaliation for filing complaints, for the convenience of staff, as a substitute for treatment program or in quantities that interfere with the treatment program.

~~(4)~~(6) A right to confidential case discussions, consultation, examination, and patient records. Confidential information shall only be provided to those people providing evaluation and/or treatment or as authorized by law.

~~(5)~~(7) A right to be informed of the ~~process regarding complaints and of procedures for registering those complaints~~ procedures for filing complaints and the process for appeals when complaints are not resolved to the patient's satisfaction.

~~(6)~~(8) A right to access the services of a Patients' Rights Advocate.

~~(7)~~(9) A right to confidential ~~communicate~~ions with an attorney, either through correspondence or through private consultation, during regularly scheduled visiting days and hours.

~~(8) A right not to be subjected to abuse or neglect.~~

~~(9) A right not to be subjected to unnecessary physical restraint or seclusion.~~

~~(10) A right not to be subjected to unnecessary administrative or protective isolation.~~

~~(11)~~(10) A right to religious freedom and practice, within the context of the environment of a secure treatment facility.

~~(12) A right to participate in appropriate programs of publicly supported education~~

~~that are consistent with the patient's treatment plan and with the secure treatment facility environment.~~

~~(13) A right to social interaction. The formation of supervised patient leisure time activity groups that promote educational, social, cultural and recreational interests of participating patients shall be permitted, except for activities that pose a potential threat to safety and security or that are inconsistent with the patient's treatment plan.~~

~~(14)~~(11) A right to opportunities for physical exercise and recreational opportunities activities.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 43.92, Civil Code; Sections 5325.1, 5328, 5328(r), and 5328.9, Welfare and Institutions Code.

884. Patients' Rights Subject to Denial for Good Cause.

(a) ~~Patients have the rights listed in Subsections (a)(1) of this Section.~~ The patient's parent, guardian, or conservator may not waive ~~these the~~ rights listed in this Section unless authority to waive these rights is specifically granted by court order. These rights shall only be denied for good cause in accordance with Subsection (b) of this Section.

(b) Non-LPS Patients have the following rights, subject to denial for good cause:

(1) A right to keep and use personal possessions as space permits, except items and materials that are listed as contraband by the facility. Each facility shall make a copy of the contraband listing available on all treatment units and public areas within the facility. Each patient shall receive a copy of the contraband listing upon admission.

(2) A right to have access to individual secured storage space for personal possessions in accordance with the formal policies and procedures of the facility. Access shall be in compliance with Title 19, Section 314, and Title 22, Sections 71543 and 73507.

(3) A right to keep and spend a sum of the patient's own money via the facility monetary replacement system.

(4) A right to personal visits during regularly scheduled visiting days and hours. The right to have visits shall not be denied except as is necessary for reasonable security of the facility and the safety of persons. The length and frequency of visits and the number of persons permitted to visit a patient at the same time may be limited consistent with safety, security, ~~and available space,~~ and to ensure that all patients have a fair opportunity to have visitors.

(5) A right to access telephones to make and receive confidential telephone calls, or to have such calls made for them. Telephone hours, frequency and duration of telephone calls, and method of payment may be limited to ensure access by all patients.

(6) A right to have access to letter writing materials and to mail and receive correspondence. Designated facility employees shall open and inspect all incoming and outgoing mail addressed to and from patients for contraband. Confidential mail, as defined in Section 881(b), shall not be read. Limitations on size, weight and volume of mail shall be specified by formal facility policy.

(7) A right to receive packages. Designated facility employees shall open and inspect all incoming and outgoing packages addressed to and from patients for contraband. Limitations on the size, weight and volume, and frequency/number of packages allowed shall be specified by formal facility policy.

(8) A right to have access to legal reference material. Limitations on the time, duration, frequency, and method of access shall be specified by formal facility policy to ensure opportunity for access by all patients.

(9) A right to participate in appropriate programs of publicly supported education that are consistent with the patient's treatment plan and with the secure treatment facility environment.

(10) A right to social interaction. The formation of supervised patient leisure time activity groups that promote educational, social, cultural and recreational interests of participating patients shall be permitted, except for activities that pose a threat to safety and security.

~~(b)~~(c) The rights specified in Subsection ~~(a)~~(b) of this Section shall be denied only for good cause. Good cause for denying a patient the exercise of a right exists when the facility director determines that:

- (1) The exercise of the specific right would be injurious to the patient; or
- (2) There is evidence that the specific right, if exercised would seriously infringe on the rights of others; or
- (3) The facility would suffer serious damage if the specific right is not denied, or;
- (4) The exercise of the right would compromise the safety and security of the facility and/or the safety of others; and
- (5) That there is no less restrictive way of protecting the interests specified in Subsections ~~(b)~~(c)(1) through (4) of this Section.

~~(c)~~(d) The reason for denial of a right under this Section must be related to the specific right denied. A right specified in this Section shall not be withheld or denied as a punitive measure, nor shall a right specified in this Section be considered a privilege to be earned. A denial of a right shall not exceed thirty days without additional staff review. Treatment plans shall not include denial of any right specified in Subsection ~~(a)~~(b) of this Section.

~~(d)~~(e) Each denial of a right specified in this Section shall be noted in the patient's treatment record. Documentation shall take place immediately whenever a right is denied. The notation shall include:

- (1) Date and time the right was denied.
- (2) Specific right denied.
- (3) Good cause for denial of right.

(4) Date of review if denial was extended beyond 30 days.

(5) The facility director's signature authorizing the denial.

~~(e)(f)~~ The patient/~~resident~~ shall be told of the content of the notation and the process for restoration at the time of the denial.

~~(f)(g)~~ Each denial of a right specified in this Section shall be documented regardless of the reason for the denial, or the frequency with which a specific right is denied in a particular facility, or to a particular patient.

~~(g)(h)~~ A patient's right under this Section shall not continue to be denied when the good cause for its denial no longer exists. When a right has been denied, staff shall employ the least restrictive means of managing the behavior that led to the denial. The date that a specific right is restored shall be documented in the patient's treatment record.

~~(h)(i)~~ Information in the patients' treatment record pertaining to a denial of rights shall be available on request to the patient, his attorney/conservator/guardian, the Department, or a member of the State Legislature.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 5326, Welfare and Institution Code; Section 13108, Health and Safety Code.

885. Complaint and Appeal Procedure.

~~(a) The list of rights that is required to be posted, provided and explained to the patient pursuant to~~ Non-LPS patients shall be informed of and provided with a written procedure for filing complaints or appeals alleging violations of any right(s) contained in Sections 883 and 884. shall also contain: The written procedure shall contain the following information:

~~(1)(a)~~ Notification that any patient who believes a patients' right listed in this Article has been abused, punitively withheld, or unreasonably denied may file a complaint with the Patients' Rights Advocate.

~~(2)(b)~~ The contact name of the Patients' Rights Advocate assigned to address patients' rights complaints, their telephone number and contact times.

~~(b)(c)~~ A statement that the Patients' Rights Advocate shall take action to investigate and address patients' rights complaints within two working days.

~~(e)(d)~~ A statement that if the complainant is not satisfied with the response and/or action taken ~~in pursuant to~~ Subsection ~~(b)(c)~~ of this Section, the complainant may, within ten working days, request that the complaint be referred to the facility director for review and response.

~~(d)(e)~~ A statement that the facility director shall take action to review the patients' rights complaint and issue a response within fifteen working days.

~~(e)(f)~~ A statement that if the complainant is not satisfied with the response of the facility director, the complainant may, within thirty working days, request that the complaint be referred to the Office of Patients' Rights for review and response.

~~(f)~~(g) A statement that if the complainant is not satisfied with the response of the Office of Patients Rights, the complainant may request, within thirty working days, that the complaint be referred to the Director of the Department, ~~or designee~~.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: 42 CFR 482.13(a)(2).

886. Quarterly Reports to the Office of Patients' Rights.

(a) Each facility director shall file quarterly reports with the Department's Office of Patients' Rights, by the last day of January, April, July, and October. These reports shall list the number of patients whose right or rights were denied and the specific right or rights that were denied.

(b) The quarterly reports shall enable the Director of the Department and the Office of Patients' Rights to identify individual treatment records, if necessary, for further analysis and investigation.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 5326.1, Welfare and Institutions Code.

Article 3. General Limitations Applicable to Non-LPS Patients.

890. Clothing.

The facility director shall specify the types of clothing that are authorized to be worn by non-LPS patients in the facility.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Section 7232, Welfare and Institutions Code.

Section 891. Internet Usage.

Non-LPS ~~P~~patients shall not have access to the Internet.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Sections 4005.1 and 4027, Welfare and Institutions Code.

Section 892. Operating Businesses From Within the Facility.

Non-LPS patients shall not operate a business from within the facility. If there is any business activity of a patient or disposition of property owned by a patient that needs to be attended to or to be administered, the patient shall designate a person outside the facility to be responsible for doing so. If necessary, the patient shall execute a power of attorney or other legally authorizing instrument that allows the patient's designee the legal authority to take care of the patient's business or property while the patient is in the facility.

NOTE: Authority cited: Sections 4005.1 and 4027, Welfare and Institutions Code.
Reference: Sections 4005.1 and 4027, Welfare and Institutions Code.